

No. 7389

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United States  
Circuit Court of Appeals

For the Ninth Circuit. 6

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GALEN H. WELCH, Collector of Internal Revenue, for  
the Sixth Collection District of California,

Appellant,

vs.

THE KERN RIVER OILFIELDS OF CALIFORNIA,  
LTD., a corporation,

Appellee.

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Transcript of Record.

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Upon Appeal from the District Court of the United States for the  
Southern District of California, Central Division.

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FILED

MAY 25 1934

PAUL P. GIBBIEN,  
CLERK



No.

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Circuit Court of Appeals  
For the Ninth Circuit.

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Appellant,

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Upon Appeal from the District Court of the United States for the  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Defendant and Appellant:

PEIRSON M. HALL, Esq.,

United States Attorney,

ROBERT W. DANIELS, Esq.,

Assistant United States Attorney,

ALVA C. BAIRD, Esq.,

Assistant United States Attorney,

EUGENE HARPOLE, Esq.,

Special Attorney,

Bureau of Internal Revenue,

Federal Building,

Los Angeles, California.

For Plaintiff and Appellee:

MILLER, CHEVALIER, PEELER

& WILSON, Esqs.,

JOSEPH D. PEELER, Esq.,

Title Insurance Building,

Los Angeles, California.

## UNITED STATES OF AMERICA, ss.

TO THE KERN RIVER OILFIELDS OF CALIFORNIA, LTD., a corporation, and TO: MILLER, CHEVALIER, PEELER & WILSON, its attorneys:

## Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 8th day of March, A. D. 1934, pursuant to Order Allowing Appeal filed February 8, 1934. in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled THE KERN RIVER OILFIELDS OF CALIFORNIA, LTD., a corporation, vs. GALEN H. WELCH, Collector of Internal Revenue for the Sixth Collection District of California, No. 4254-C, wherein GALEN H. WELCH, Collector of Internal Revenue, is Defendant and Appellant and you are Plaintiff and Appellee to show cause, if any there be, why the Judgment in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.



WITNESS, the Honorable Geo. Cosgrave United States District Judge for the Southern District of California, this 8th day of February, A. D. 1934, and of the Independence of the United States, the one hundred and fifty-eighth.

Geo. Cosgrave

U. S. District Judge for the Southern District of California.

Receipt is acknowledged of a copy of the within Citation, together with a copy of the Petition for Appeal, Assignments of Error and Order Allowing Appeal herein.

DATED: FEBRUARY 8th, 1934.

MILLER, CHEVALIER, PEELER & WILSON,

By Joseph D. Peeler

Attorneys for Plaintiff.

By D. Champion.

[Endorsed]: Filed Feb 8 - 1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION.

THE KERN RIVER OILFIELDS :	:	
OF CALIFORNIA, LTD., :	:	
a Corporation, :	:	
	:	
Plaintiff, :	:	
-v- :	:	At Law
	:	No. 4254-J
GALEN H. WELCH, Collector of :	:	COMPLAINT
Internal Revenue for the Sixth Col- :	:	
lection District of California, :	:	
	:	
Defendant. :	:	

NOW COMES the plaintiff, The Kern River Oilfields of California, Ltd., a corporation, and through its attorneys complains of the defendant, Galen H. Welch, and as and for a cause of action against said defendant alleges:

I.

That the plaintiff, The Kern River Oilfields of California, Ltd., is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

II.

That the jurisdiction of this court is dependent upon a Federal question in that the cause arises under the laws

of the United States of America pertaining to internal revenue, to-wit, the Revenue Act of 1924 and subsequent Acts.

### III.

That the defendant Galen H. Welch, is now and has been since April 6, 1926, the Collector of Internal Revenue for the Sixth Collection District of California, duly commissioned and acting pursuant to the laws of the United States, and resides and has his office in the City of Los Angeles, in the said State of California.

### IV.

That this action is brought against the defendant as an officer acting under and by virtue of the Revenue Act of 1924 and later Acts on account of acts done under color of his office, and of the Revenue Laws of the United States as will hereinafter more fully appear.

### V.

That plaintiff duly filed with the proper officer designated by statute, its income tax returns for the fiscal year ended May 31, 1925, as required by law and within the periods prescribed by law, on to-wit, August 13, 1925, November 14, 1925, and June 11, 1926.

### VI.

That Rex B. Goodcell, as Collector of Internal Revenue for the Sixth Collection District of California, demanded and exacted payment under protest and duress from the plaintiff of taxes shown on said returns in the following amounts and on the following dates:

August 13, 1925	\$7,000.00
November 14, 1925	3,407.55
February 4, 1926	5,203.78
	<hr/>
Total	\$15,611.33

That the defendant, Galen H. Welch, as Collector of Internal Revenue for the Sixth Collection District of California, demanded and exacted payment under protest and duress from the plaintiff of taxes shown on said returns in the following amounts and on the following dates:

May 12, 1926	\$3,247.05
September 10, 1926	1,956.72
	<hr/>
Total	\$5,203.77

That the total taxes paid by plaintiff to the Collectors of Internal Revenue as set forth above, for the fiscal year ended May 31, 1925, was \$20,815.10.

## VII.

That on September 26, 1926, plaintiff filed with the defendant as Collector of Internal Revenue for the Sixth Collection District of California, a claim for refund on the form provided by the Commissioner of Internal Revenue, setting forth overpayment of \$1,956.72 or such greater amount as was legally refundable, and stating the following reasons for said claim:

“Because this amount is erroneously assessed by reason of the fact that it represents the difference between the tax shown as due by the original return filed for the fiscal year ended May 31st, 1925, and the corrected return filed in accordance with the Revenue Act of 1926. The latter

return shows a reduced net income due to depletion allowable under the 1926 Act and the correct tax is therefore smaller than the tax shown by the original return. Nevertheless the Collector has demanded and has been paid the tax shown on the original return."

That on November 8, 1928, plaintiff filed with the defendant as Collector of Internal Revenue for the Sixth Collection District of California, a claim for refund on the form provided by the Commissioner of Internal Revenue, setting forth overpayment of \$12,817.57, or such greater amount as was legally refundable, attaching thereto a schedule showing a recomputation of the taxes as follows:

"KERN RIVER OILFIELDS OF CALIFORNIA  
LTD. INCOME TAX RETURN FOR FISCAL  
YEAR ENDED MAY 31, 1925, STATE-  
MENT ATTACHED TO CLAIM  
FOR REFUND.

	1924	1925
	Law	Law
Net Income per Agents		
Report 10-24-28	\$161,017.81	\$78,444.16
Additional Deductions Allowable		
(1) London Offices		
Expenses	\$3,560.16	
(2) British Tax deducted from		
Dividends of St. Helens		
Petroleum Co.		
Limited,		
£7234-8@4.61	33,350.58	\$33,350.58

(2) British Income Tax  
Assured

£555-6@4.61	25,586.88	62,497.62	25,586.88	62,497.62
Net Income adjusted		\$98,520.19		\$16,946.54
Income Tax Rate		12½%		13%
Tax		\$12,315.02		\$ 2,073.05
Number of months in year		7		5
Proration		7,183.76		813.77
Total tax assessable				7,997.53
Total tax paid				20,815.10
Amount refundable				\$12,817.57

- (1) The London Office expenses have been proportioned by the Revenue Agent between sources within and without the United States. These expenses should be allocated directly to the company's operations within the United States.
- (2) The Revenue Agent has entirely ignored the deduction of all British taxes paid or accrued in accordance with Section 234a and Section 234b of the Revenue Act of 1924. These taxes were all paid on income from operations within the United States. The Kern River Oilfields of California Ltd. deducted from the payments of dividends to its stockholders an amount of £33,750-0-0."

## VIII.

That by certificate of overassessment #975607, Schedule #33,589, dated March 5, 1929, the Commissioner of Internal Revenue allowed plaintiff's claim for refund in the amount of \$4,825.16, and rejected same to the extent of \$15,989.94, notifying plaintiff of such rejection therein in the following language:

"In the determination of this overassessment your claim for the refund of \$12,817.57 has been given careful consideration and to the extent not herein allowed was disallowed by the Commissioner as of the date of the schedule above noted."

## IX.

That the taxes heretofore collected from the plaintiff for the fiscal year ended May 31, 1925, are excessive to the extent of \$2,986.79 for the reasons set forth in the claim for refund heretofore presented to the Commissioner of Internal Revenue, which are the same as the grounds set forth herein as the basis for this proceeding.

## X.

During the fiscal year ended May 31, 1925, plaintiff accrued and paid to the Government of Great Britain an income tax in the amount of £5550-6-0 Sterling, and British profits tax in the amount of £196-0-0, or a total of £5746-6-0, which, at the rate of \$4.61 is the equivalent of \$26,490.44 in United States currency. The Commissioner of Internal Revenue has determined that the income of plaintiff from sources within the United States during the fiscal year ended May 31, 1925 was 86.93 per centum of the total net income of plaintiff. Accordingly,

under Section 234 of the Revenue Acts of 1924 and 1926, plaintiff is entitled to a total deduction on account of said British income taxes of 86.93 per centum of \$26,490.44, or a net amount of \$23,028.14. That the total tax upon the net income after such deduction would be \$13,063.15. That in determining the taxes heretofore paid by the plaintiff for the fiscal year ended May 31, 1925, the Commissioner of Internal Revenue has not allowed any deduction on account of said British income and profits taxes.

### XI.

That the defendant erroneously and illegally collected from the plaintiff and is erroneously and illegally withholding from plaintiff and is indebted to said plaintiff in the total amount of \$2,926.79, with interest thereon as prescribed by law, representing amounts illegally exacted from plaintiff on account of income taxes for the fiscal year ended May 31, 1925.

### XII.

That although often demanded the defendant has not nor has anyone on his behalf repaid or refunded said sum or sums or any part thereof, and said claim of said plaintiff herein is the sole property of plaintiff and has not been sold or assigned or transferred to any person or individual.

WHEREFORE, plaintiff prays for judgment against the defendant, Galen H. Welch, in the amount of \$2926.79, together with interest at 6 per centum from dates of payment as provided by law.

Joseph D. Peeler  
Melvin D. Wilson  
Attorneys for Plaintiff.





[TITLE OF COURT AND CAUSE.]

ANSWER

Comes now the defendant, GALEN H. WELCH, and in answer to the above-entitled complaint admits, alleges and denies, to-wit:

I.

Denies specifically each and every allegation contained in paragraph I of said complaint.

II.

Admits each and every allegation contained in paragraph II of said complaint.

III.

Admits each and every allegation contained in paragraph III of said complaint.

IV.

Admits each and every allegation contained in paragraph IV of said complaint.

V.

Answering paragraph V, the defendant admits that plaintiff filed its income tax returns for the fiscal year ended May 31, 1925, and further admits that two of said returns were filed on August 13, 1925 and November 14, 1925, respectively, as alleged. Denies specifically that any of such returns were filed by plaintiff on June 11, 1926, and alleges the fact to be that said return was filed on May 12, 1926.

Denies specifically each and every other allegation contained in said paragraph.

## VI.

Answering paragraph VI, the defendant admits payment of the taxes in the amounts and on the dates set forth in said paragraph; denies specifically that said taxes, or any part thereof, were paid under protest and duress.

## VII.

Admits each and every allegation contained in paragraph VII of said complaint.

## VIII.

Answering paragraph VIII, defendant admits that the Commissioner of Internal Revenue allowed a refund to the plaintiff in the sum of \$4,825.16; denies specifically that plaintiff's claim for refund was rejected to the extent of \$15,989.94. The defendant alleges in this behalf that said claim for refund was rejected to the extent of \$7,992.41.

## IX.

Denies specifically each and every allegation contained in paragraph IX of said complaint.

## X.

Denies specifically each and every allegation contained in paragraph X of said complaint.

## XI.

Denies specifically each and every allegation contained in paragraph XI of said complaint.

## XII.

Answering paragraph XII, the defendant admits that no part of the amount herein sought to be recovered has been repaid or refunded to the plaintiff. Denies specifically each and every other allegation contained in said paragraph.

WHEREFORE, this defendant prays that plaintiff take nothing by its complaint and that defendant have his costs of suit.

SAMUEL W. McNABB,  
United States Attorney,

Ignatius F. Parker.

IGNATIUS F. PARKER,

Assistant United States Attorney,

C. M. CHAREST,

General Counsel,

Bureau of Internal Revenue,

Alva C. Baird

ALVA C. BAIRD,

Special Attorney,

Bureau of Internal Revenue.

Richard W. Wilson,

RICHARD W. WILSON,

Special Attorney,

Bureau of Internal Revenue.

STATE OF CALIFORNIA     )  
   ) ss.  
 COUNTY OF LOS ANGELES )

GALEN H. WELCH, being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting Collector of Internal Revenue for the Sixth Internal Revenue Collection District of the State of California, and is the defendant named in the within entitled action; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are herein stated on his information and belief, and as to those matters he believes it to be true.

Galen H. Welch.  
 Collector of Internal Revenue.

Subscribed and sworn to before me this 29 day of December, 1930.

[Seal]

T. G. Albright,

Notary Public.

My Commission Expires Oct. 22, 1932.

Notary Public in and for the County of Los Angeles,  
 State of California

[Endorsed]: Filed Dec. 30, 1930 R. S. Zimmerman,  
 Clerk, By M. L. Gaines, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION WAIVING JURY

IT IS HEREBY STIPULATED by and between counsel for the respective parties that trial by jury in the above case is expressly waived.

DATED: This 27th day of April, 1931.

MILLER, CHEVALIER, PEELER & WILSON

By Joseph D. Peeler

Attorneys for Plaintiff.

Samuel W. McNabb

SAMUEL W. McNABB,

United States Attorney

Ignatius F. Parker

IGNATIUS F. PARKER

Assistant United States Attorney

Richard W. Wilson,

RICHARD W. WILSON,

Special Attorney for the Bureau  
of Internal Revenue.

Attorneys for Defendant.

[Endorsed]: Filed Apr. 28, 1931 R. S. Zimmerman,  
Clerk By Francis E. Cross, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION AND ORDER CONSOLIDATING  
CASES FOR TRIAL.

It is hereby stipulated by and between the plaintiff and defendant above named, through their respective attorneys, that the above-entitled cause may be consolidated for trial with the case of The St. Helens Petroleum Company, Ltd. v. Galen H. Welch, Collector of Internal Revenue for the Sixth Collection District of California, case #4252-C, which is set for trial on April 28, 1931.

This stipulation is entered into for the reason that the above cases are so similar in fact and law that it would be a waste of time for the court and the parties concerned to try the cases separately.

Feb. 24, 1931.

Joseph D. Peeler  
Melvin D. Wilson  
Attorneys for Plaintiff.

Samuel W. McNabb  
SAMUEL W. McNABB,  
United States Attorney

Ignatius F. Parker  
IGNATIUS F. PARKER,  
Assistant United States Attorney.

Richard W. Wilson,  
Special Attorney, Bureau of  
Internal Revenue.

Attorneys for Defendant.

## ORDER

Upon reading the above stipulation and good cause appearing therefor, the court hereby transfers the above-entitled cause to the trial calendar and department of the Honorable Judge Cosgrave.

Wm. P. James

Judge of the District Court of the United States, In and  
for the Southern District of California, Central  
Division.

## CONSENT

Upon reading the above stipulation and the order of the Honorable Judge James appearing above, I hereby consent to and accept the transfer of the above cause to my department.

Geo Cosgrave,

Judge of the District Court of the United States, In and  
for the Southern District of California, Central  
Division.

## ORDER

Upon reading the above stipulation and the above order and consent transferring the above-entitled cause to the Honorable Judge Cosgrave's department, the court hereby consents and orders that the above cases be consolidated for trial before the Honorable Judge Cosgrave on the 28th day of April, 1931.

Geo Cosgrave

Judge of the District Court of the United States, In and  
for the Southern District of California, Central  
Division.

[Endorsed]: Filed Feb 25, 1931 R. S. Zimmerman,  
Clerk By M. L. Gaines, Deputy Clerk.



[TITLE OF COURT AND CAUSE.]

SPECIAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW.

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The above case came on regularly for trial on the 28th day of April, 1931, before the Court, sitting without a jury, a trial by jury having been waived by written stipulation of the parties thereto; plaintiff appearing by Joseph D. Peeler and Melvin D. Wilson, Esqs., and Miller, Chevalier, Peeler & Wilson, its attorneys, and the defendant appearing by Samuel W. McNabb, Esq., United States Attorney for the Southern District of California, Ignatius F. Parker, Esq., Assistant United States Attorney for said District, C. M. Charest, Esq., General Counsel, Bureau of Internal Revenue, and Richard W. Wilson, Esq., Special Attorney, Bureau of Internal Revenue; and evidence, both oral and documentary, having been received and the Court having fully considered the same, hereby makes the following special findings of fact:

I.

The Court finds that the plaintiff, The Kern River Oilfields of California, Ltd. is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

II.

That the plaintiff filed with the Collector of Internal Revenue for the Sixth Collection District of California, its original and amended income tax returns for the fiscal

year ended May 31, 1925, on August 13, 1925, November 14, 1925, and May 12, 1926.

### III.

That the plaintiff paid to Rex B. Goodcell, as Collector of Internal Revenue, upon demand, taxes shown on said returns in the following amounts and on the following dates:

August 13, 1925	\$7,000.00
November 14, 1925	3,407.55
February 4, 1926	5,203.78
	<hr/>
Total -	\$15,611.33

### IV.

That the plaintiff paid to the defendant, Galen H. Welch, as Collector of Internal Revenue, taxes shown on said returns for the fiscal year ended May 31, 1925, in the following amounts and on the following dates:

May 12, 1926	\$ 3,247.05
September 10, 1926	1,956.72
	<hr/>
Total -	\$ 5,203.77

### V.

That on September 26, 1926, and on November 8, 1928, plaintiff filed with the Commissioner of Internal Revenue claims for refund of income taxes paid for the fiscal year ended May 31, 1925, in the manner and form provided by law, covering the issues raised in the complaint herein.

## VI.

That by Certificate of Overassessment #975607, Schedule #33,589, dated March 5, 1929, the Commissioner of Internal Revenue allowed plaintiff's claim for refund in the amount of \$4,825.16, and rejected it for \$7,992.41 as of March 5, 1929.

## VII.

That plaintiff is entitled to a further deduction of \$785.46 on account of profits taxes accrued and paid to the Government of Great Britain during the fiscal year ended May 31, 1925.

## VIII.

That during the fiscal year ended May 31, 1925, plaintiff accrued and paid to the Government of Great Britain an income tax in the amount of £5550-6-0 Sterling, which, at the rate of \$4.61, was the equivalent of \$25,586.68 in United States currency. The income of plaintiff from sources within the United States during the fiscal year ended May 31, 1925, was 86.93 per centum of the total net income of plaintiff from all sources during said year. The amount of the British income tax allocable to United States income was \$22,242.69. Plaintiff deducted from dividends paid by it to its stockholders during said fiscal year, an amount of at least \$22,242.69 on account of said British income taxes.

## IX.

That the Commissioner of Internal Revenue has allowed no deduction on account of said British income taxes for the fiscal year ended May 31, 1925.

## CONCLUSIONS OF LAW

As a conclusion of law from the foregoing facts, the Court determines that the Commissioner of Internal Revenue erred in failing and refusing to allow to plaintiff deductions on its income tax return for the fiscal year ended May 21, 1925, in the amount of \$785.46 for additional profits taxes accrued and paid to the Government of Great Britain, and in the amount of \$22,242.69 for income taxes accrued and paid to the Government of Great Britain, and in levying tax assessments on the basis of net income computed without the allowance of said deductions.

The Court determines that the defendant Galen H. Welch, erroneously and illegally collected from plaintiff the sum of \$2926.79, and that plaintiff is entitled to recover from defendant the sum of \$2926.79, together with interest at the rate of six per cent on \$2415.14 from February 4, 1926, and on \$511.65 from November 14, 1925, as provided by law.

That plaintiff is also entitled to costs of suit herein.

That judgment be entered against the defendant accordingly.

DATED: Nov. 8, 1933.

Geo. Cosgrave  
United States District Judge.

Approved as to form according to Rule 44

Eugene Harpole  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: Filed Nov. 8, 1933 R. S. Zimmerman,  
Clerk By Francis E. Cross, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE KERN RIVER OILFIELDS )	
OF CALIFORNIA, LTD., )	
a Corporation, )	
)	
Plaintiff, )	
vs. )	No. 4254-C.
)	
GALEN H. WELCH, Collector of )	
Internal Revenue for the Sixth Col- )	
lection District of California, )	
)	
Defendant. )	

---

JUDGMENT ON FINDINGS

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The above case came on regularly for trial on the 28th day of April, 1931, before the Court, sitting without a jury, a trial by jury having been waived by written stipulation of the parties thereto; plaintiff appearing by Joseph D. Peeler and Melvin D. Wilson, Esqs., and Miller, Chevalier, Peeler & Wilson, its attorneys, and the defendant appearing by Samuel W. McNabb, Esq., United States Attorney for the Southern District of California,

Ignatius F. Parker, Esq., Assistant United States Attorney for said District, C. M. Charest, Esq., General Counsel, Bureau of Internal Revenue, and Richard W. Wilson Esq., Special Attorney, Bureau of Internal Revenue; and the trial having proceeded, and oral and documentary evidence on behalf of the respective parties having been submitted to the Court for consideration and decision, and the Court, after due deliberation, having rendered its decision and filed its findings and ordered that judgment be entered in favor of plaintiff in accordance with said findings:

NOW, THEREFORE, by virtue of the law, and by reason of the findings aforesaid, it is considered by the Court that the plaintiff have judgment in the amount of \$2,926.79 together with interest at the rate of six per cent on \$1,956.72 from September 10, 1926, and on \$970.07 from May 12, 1926, as provided by law, with costs taxed at \$20.00.

Judgment rendered this Nov. 8, 1933.

Geo. Cosgrave  
United States District Judge.

#### CERTIFICATE OF PROBABLE CAUSE

The Court certifies that the defendant, Galen H. Welch, as Collector of Internal Revenue, exacted and received payment of the monies recovered herein in the performance of his official duty, and that there was probable cause

for the act done by the defendant, and that he was acting under the directions of the Secretary of the Treasury, or other proper officer of the Government.

Geo. Cosgrave  
United States District Judge.

Approved as to form as required by Rule 44.

Peirson M. Hall  
Peirson M. Hall, E. H.  
United States Attorney.

Ignatius F. Parker  
Ignatius F. Parker, E. H.  
Assistant United States Attorney.

Alva C. Baird  
Alva C. Baird, E. H.  
Assistant United States Attorney.

ATTORNEYS FOR DEFENDANT

Joseph D. Peeler  
Joseph D. Peeler,  
ATTORNEY FOR PLAINTIFF

JUDGMENT ENTERED NOVEMBER 8th, 1933

R. S. ZIMMERMAN, Clerk,  
By Francis E. Cross, Deputy.

[Endorsed]: Filed Nov. 8, 1933 R. S. Zimmerman,  
Clerk. By Francis E. Cross, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE KERN RIVER OILFIELDS )  
OF CALIFORNIA, LTD., )  
a Corporation, )  
Plaintiff, )

vs.

) Law No. 4254-J.

GALEN H. WELCH, Collector of )  
Internal Revenue for the Sixth )  
Collection District of California, )  
Defendant, )

BILL OF EXCEPTIONS

Be it remembered that heretofore to-wit, on the 28th day of April, 1931, the above-entitled cause came on regularly for trial at Los Angeles, California, upon the issues joined herein before his Honor, George Cosgrave sitting as Judge of the above-entitled Court, without a jury, a jury having been duly waived by the parties by written Stipulation as follows:



“IT IS HEREBY STIPULATED by and between counsel for the respective parties that trial by jury in the above case is expressly waived.

“Dated: This 8th day of April, 1931.

MILLER, CHEVALIER, PEELER  
& WILSON

BY JOSEPH D. PEELER,  
Joseph D. Peeler,  
Attorneys for Plaintiff.

Samuel W. McNabb,  
Samuel W. McNabb,  
United States Attorney,  
Ignatius F. Parker,  
Ignatius F. Parker,  
Assistant U. S. Attorney,  
Attorneys for Defendant.”

Messrs. Miller, Chevalier, Peeler & Wilson by Joseph D. Peeler, Esq. appeared for plaintiff, and the defendant appeared by Samuel W. McNabb, United States Attorney for the Southern District of California, Ignatius F. Parker and Louis Somers, Assistant United States Attorneys for said District, and Richard W. Wilson, Special Attorney, Bureau of Internal Revenue, and the parties introduced in evidence a Stipulation as to certain facts, which had been agreed upon by both parties, which Stipulation (omitting the Exhibits therein referred to) is as follows:

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA,  
CENTRAL DIVISION.

THE KERN RIVER OILFIELDS :	:
OF CALIFORNIA, LTD., :	:
a Corporation, :	:
	:
Plaintiff, :	:
	:
-v-	: No. 4254-J.
	:
GALEN H. WELCH, Collector of :	:
Internal Revenue for the Sixth :	:
Collection District of California, :	:
	:
Defendant. :	:

STIPULATION OF FACTS.

It is hereby stipulated and agreed by the parties, plaintiff and defendant, in this action, by their respective counsel, that the following statements of fact are true and correct, and shall be accepted and used as agreed evidence in this case, provided, however, that nothing herein shall prevent either party from introducing other and further evidence, not inconsistent herewith.

I.

That the plaintiff, The Kern River Oilfields of California, Ltd., is and was at all times hereinafter mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

## II.

That the plaintiff filed with the Collector of Internal Revenue for the Sixth Collection District of California, its original and amended income tax returns for the fiscal year ended May 31, 1925, on August 13, 1925, November 14, 1925, and May 12, 1926.

## III.

That the plaintiff paid to Rex B. Goodcell, as Collector of Internal Revenue, upon demand, taxes shown on said returns in the following amounts and on the following dates:

August 13, 1925	\$7,000.00
November 14, 1925	3,407.55
February 4, 1926	5,203.78
	<hr/>
Total	\$15,611.33

## IV.

That the plaintiff paid to the defendant, Galen H. Welch, as Collector of Internal Revenue, taxes shown on said returns for the fiscal year ended May 31, 1925, in the following amounts and on the following dates:

May 12, 1926	\$3,247.05
September 10, 1926	1,956.72
	<hr/>
Total	\$5,203.77

## V.

That on September 26, 1926, plaintiff filed with the Commissioner of Internal Revenue a claim for refund of income taxes paid for the fiscal year ended May 31, 1925,

in the manner and form shown by photostatic copy herewith, marked Exhibit No. 7.

## VI.

That on November 8, 1928, plaintiff filed with the Commissioner of Internal Revenue a claim for refund of income taxes overpaid for the fiscal year ended May 31, 1925, in the manner and form shown by photostatic copy herewith, marked Exhibit No. 8.

## VII.

That by Certificate of Overassessment #975607, Schedule #33,589, dated March 5, 1929, the Commissioner of Internal Revenue allowed plaintiff's claim for refund in the amount of \$4,825.16, and rejected it for \$7,992.41 as of March 5, 1929.

## VIII.

That plaintiff is entitled to a further deduction of \$785.46 on account of profits taxes accrued and paid to the Government of Great Britain during the fiscal year ended May 31, 1925.

## IX.

That during the fiscal-year ended May 31, 1925, plaintiff accrued and paid to the Government of Great Britain an income tax in the amount of £5550-6-0 Sterling, which, at the rate of \$4.61, was the equivalent of \$25,586.88 in United States currency. That the income of plaintiff from sources within the United States during the fiscal year ended May 31, 1925, was 86.93 per centum of the total net income of plaintiff from all sources during said year. Plaintiff contends, and defendant denies, that plaintiff is entitled to a deduction, in determining its taxable

net income, of the British income taxes so accrued and paid to the Government of Great Britain; but it is agreed that if said taxes are deductible, the amount of said deduction for the fiscal year ended May 31, 1925, is \$22,-242.68. It is also stipulated that plaintiff deducted from the dividends paid by it to its stockholders during said fiscal year an amount of at least \$22,242.68 on account of said British income taxes.

## X.

That the Commissioner of Internal Revenue has allowed no deduction on account of said British income taxes for the fiscal year ended May 31, 1925, and that, except as set forth in paragraph VII above, no refund has been made to plaintiff of any taxes paid by it on its Federal income tax returns for the fiscal year ended May 31, 1922.

Joseph D. Peeler  
Miller, Chevalier, Peeler & Wilson,  
Counsel for Plaintiff.

Samuel W. McNabb  
SAMUEL W. McNABB,  
United States Attorney.

Ignatius F. Parker  
IGNATIUS F. PARKER,  
Assistant United States Attorney.

C. M. CHAREST,  
General Counsel, Bureau of Internal  
Revenue.

Richard W. Wilson,  
Richard W. Wilson,  
Special Attorney, Bureau of Inter-  
nal Revenue.

Approved:

-----  
United States District Judge.

[Endorsed]: Filed April 28, 1931 R. S. Zimmerman,  
Clerk. By Francis E. Cross, Deputy Clerk.

Thereupon the respective parties having rested, plaintiff by its counsel, moved for judgment on the record and asked for special Findings of Fact, and the defendant, by his counsel, moved for judgment for the defendant on the oral and documentary evidence introduced. The Court reserved its ruling on said motions until the final decision of the case.

Counsel for the respective parties thereupon entered into the following Stipulation in open Court:

“MR. PEELER: There is just one thing I overlooked, and should have stated. This involves British cases and British law, and by agreement, we have not attempted to put into evidence the British law or the British cases. I don't know whether the court will take judicial notice

of them automatically or not, but we would like to stipulate that the court may take judicial notice of the British law incorporated in the briefs of counsel.

“MR. WILSON: That is agreeable to the Government, your Honor.

“THE COURT: Very well.”

Pursuant to said Stipulation made in open Court, the plaintiff in its opening Brief cited the following British cases and British law:

Act of 1842, Section 54.

British Income Tax 1918, Schedule D, Par. 359.

British Income Tax 1918, Schedule D, Par. 394.

General Rules, Paragraph 420.

General Rules, Paragraph 439.

Law of Income Tax, E. M. Konstam, K. C., 1923.

Bradbury v. English Sewing Cotton Company, Ltd., (1922) 2 K.B. 589.

Commissioners of Inland Revenue v. John Blott (H. L. 1921) 2 A.C. 171.

Gold Fields American Development Company, Ltd., v. Consolidated Gold Fields of South Africa, Ltd., 135 The Law Times 14 (1926).

Rex v. Purdie (1914) 3 K. B. 112, 111 Times Law Reports 531.

Sheldrick v. South African Breweries, Ltd. (1923) 1 K. B. 173, at 191.

Defendant cited British cases and British law as follows in his Brief:

Ashton Gas Company v. Attorney General (1906)  
75 L. J. Ch. 1, 93 L. T. 676.

Bart, Sir Marcus Samuel, v. The Commissioner of  
Inland Revenue, 34 T. L. R. 552 (Vol. 7,  
Great Britain Tax Cases, p. 27).

Brooke v. Commissioners of Inland Revenue (7  
T. C. 261) (1918) 1 K. B. p. 257.

Commissioners of Inland Revenue v. John Blott  
(H. L. 1921) 2 A. C. 171.

Mylam (Surveyor of Taxes) v. The Market  
Harborough Advertiser Company, Ltd., 21 T.  
L. R. 201, Great Britain Tax Cases, Vol. 5,  
p. 95.

Scottish Union and National Insurance Company  
v. New Zealand and Australian Land Company  
(1921), 1 App. Cas. 172.

Sheldrick v. South African Breweries, Ltd. (1923),  
1 K. B. 173.

“Income Tax”, F. G. Underhay.

“The Law of Income Tax”, Second Edition, E. M.  
Konstam, K. C.

Report of Commissioner of Inland Revenue for  
the fiscal year ended March 31, 1922.

“Taxation of Business in Great Britain”, Depart-  
ment of Commerce, Trade Promotion Series,  
No. 60, p. 65.



Great Britain:

Income Tax Act 1918 and Finance Acts 1919 to 1925, Inc.

Schedule D, paragraph 359.

Schedule D, paragraph 394,

Section 237, Act of 1918.

General Rules, paragraph 420.

General Rules, paragraph 439.

General Rules, paragraph 442.

In its Reply Brief, plaintiff cited British law and British cases as follows:

Konstam, Income Tax, pp. 19 and 20.

Ashton Gas Company v. Attorney General, 75 L. J. Ch. 1.

Bradbury v. English Sewing Cotton Co., Ltd., 2 K. B. 589.

Commissioners v. Blott, 2 A. C. 171.

Gold Fields American Development Company, Ltd. v. Consolidated Gold Fields of South Africa, Ltd., 135 The Law Times, 14.

Ritson v. Phillips, 131 L. T. 384; 9 Tax Cas. 10.

Briefs were filed and the cause submitted for decision. Thereafter and on the 21st day of September, 1933, the Court made the following Minute Order:

At a stated term, to wit: The SEPTEMBER Term, A. D. 1933, of the District Court of the United States of America, within and for the CENTRAL Division of the Southern District of California, held at the Court Room thereof, in the City of LOS ANGELES on THURSDAY the 21st day of SEPTEMBER in the year of our Lord one thousand nine hundred and thirty-three.

Present:

The Honorable GEO COSGRAVE District Judge.

THE ST. HELENS PETROLEUM )	
COMPANY, LTD., a corporation, )	
Plaintiff, )	Nos. 4252
vs. )	4255
GALEN H. WELCH, Collector of )	
Internal Revenue, Defendant. )	
THE ST. HELENS PETROLEUM )	
COMPANY, LTD., a corporation, )	Nos. 4258-H
Plaintiff, )	4045-H
vs. )	(Dismissed)
REX B. GOODCELL, Collector of )	
Internal Revenue. )	
KERN RIVER OILFIELDS OF )	
CALIFORNIA, LTD., a corporation, )	
Plaintiff, )	Nos. 4253-M
vs. )	4256-M
REX B. GOODCELL, Collector of )	4257-J
Internal Revenue, Defendant. )	Law
KERN RIVER OILFIELDS OF )	
CALIFORNIA, LTD., a corporation, )	
Plaintiff, )	
vs. )	No. 4254-J
GALEN H. WELCH, Collector of )	Law
Internal Revenue, Defendant.)	

These consolidated causes having under date of April 28, 1931 come before the Court for hearing, and having been ordered submitted on Stipulation of Facts filed and briefs to be filed, and briefs having been filed, and the Court having duly considered the matter, it is now by the Court ordered:

“The question presented in this case is whether, in computing its net taxable income, a foreign corporation is entitled to deduct income taxes paid a foreign country when such taxes so paid were, as permitted by the laws of the foreign country, deducted from dividends paid to its stockholders. The Revenue Act applicable to the years involved in clear language allows such deduction, but the government maintains that since the corporation is empowered to deduct from the dividends payable to its stockholders the amount of such tax, it does not come within the meaning of the Revenue Act.

“I think the position of the government is not well-founded. The foreign corporation in the express language of the Revenue Act is entitled to a deduction of such payments and I regard as entirely incidental the circumstance that under the laws of the foreign country the corporation is entitled to credit to the tax so paid when it comes to paying dividends to its shareholders. The interpretation sought by the government would change a <sup>statute</sup> / provision of a statute in which there is no ambiguity whatever. This may not be done. (Gould v. Gould, 245 U. S. 151).

Judgment is therefore ordered in favor of the plaintiffs with exception to defendant.

On the 8th day of November, 1933, defendant filed and presented the following Request for Findings of Fact and Conclusions of Law to the Court:

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE KERN RIVER OILFIELDS )		
OF CALIFORNIA, LTD, a )		
Corporation, )		
Plaintiff, )		
	)	
vs. )		NO. 4254-J.
	)	
GALEN H. WELCH, Collector )		
of Internal Revenue, )		
	)	
Defendant. )		

REQUEST FOR FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Comes now the Defendant above-named, by and through his attorney, Peirson M. Hall, United States Attorney for the Southern District of California, Ignatius F. Parker and Alva C. Baird, Assistant United States Attorneys for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and hereby requests the Court that in rendering and making its judgment in the above-entitled cause, which has been submitted to the Court, said Court make specific findings of fact and conclusions of law upon the issues included in said cause, as

set forth in the proposed Findings of Fact and Conclusions of Law hereto attached.

Peirson M. Hall

PEIRSON M. HALL, E. H.

United States Attorney,

Alva C. Baird

ALVA C. BAIRD, E. H.

Assistant U. S. Attorney,

Eugene Harpole,

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue,

Attorneys for Defendant.

Presented and rejected

Geo Cosgrave,

Judge.

## FINDINGS OF FACT.

### I.

That there was so substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action.

## CONCLUSIONS OF LAW.

### I.

That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action.

## II.

That upon the law, the plaintiff is not entitled to recover any sum whatsoever from the defendant in the above-entitled cause.

Dated: This.....day of....., 1933.

-----  
 UNITED STATES DISTRICT JUDGE.

Approved as to form as  
 provided by Rule 44:

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Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 8, 1933 R. S. Zimmerman,  
 Clerk. By Francis E. Cross, Deputy Clerk.

And plaintiff presented the following Findings of Fact and Conclusions of Law to the Court on the said 8th day of November, 1933:

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE KERN RIVER OILFIELDS )	
OF CALIFORNIA, LTD., a )	
Corporation, )	
Plaintiff, )	
)	
vs. )	No. 4254-C.
)	
GALEN H. WELCH, Collector )	
of Internal Revenue for the Sixth )	
Collection District of California, )	
)	
Defendant. )	

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SPECIAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW.

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The above case came on regularly for trial on the 28th day of April, 1931, before the Court, sitting without a jury, a trial by jury having been waived by written stipulation of the parties thereto; plaintiff appearing by Joseph D. Peeler and Melvin D. Wilson, Esqs., and Miller, Chevalier, Peeler & Wilson, its attorneys, and the defendant appearing by Samuel W. McNabb, Esq., United States Attorney for the Southern District of California, Ignatius F. Parker, Esq., Assistant United States Attorney for

said District, C. M. Charest, Esq., General Counsel, Bureau of Internal Revenue, and Richard W. Wilson, Esq., Special Attorney, Bureau of Internal Revenue; and evidence, both oral and documentary, having been received and the Court having fully considered the same, hereby makes the following special findings of fact:

### I.

The Court finds that the plaintiff, The Kern River Oil-fields of California, Ltd. is and was at all times herein-after mentioned, a corporation organized under the laws of Great Britain, and having its principal office and place of business at Los Angeles, California.

### II.

That the plaintiff filed with the Collector of Internal Revenue for the Sixth Collection District of California, its original and amended income tax returns for the fiscal year ended May 31, 1925, on August 13, 1925, November 14, 1925, and May 12, 1926.

### III.

That the plaintiff paid to Rex B. Goodcell, as Collector of Internal Revenue, upon demand, taxes shown on said returns in the following amounts and on the following dates:

August 13, 1925	\$7,000.00
November 14, 1925	3,407.55
February 4, 1926	5,203.78
	<hr/>
Total -	\$15,611.33



## IV.

That the plaintiff paid to the defendant, Galen H. Welch, as Collector of Internal Revenue, taxes shown on said returns for the fiscal year ended May 31, 1925, in the following amounts and on the following dates :

May 12, 1926	\$3,247.05
September 10, 1926	1,956.72
	<hr/>
Total -	\$5,203.77

## V.

That on September 26, 1926, and on November 8, 1928, plaintiff filed with the Commissioner of Internal Revenue claims for refund of income taxes paid for the fiscal year ended May 31, 1925 in the manner and form provided by law, covering the issues raised in the complaint herein.

## VI.

That by Certificate of Overassessment #975607, Schedule #33,589, dated March 5, 1929, the Commissioner of Internal Revenue allowed plaintiff's claim for refund in the amount of \$4,825.16, and rejected it for \$7,992.41 as of March 5, 1929.

## VII.

That plaintiff is entitled to a further deduction of \$785.46 on account of profits taxes accrued and paid to the Government of Great Britain during the fiscal year ended May 31, 1925.

## VIII.

That during the fiscal year ended May 31, 1925, plaintiff accrued and paid to the Government of Great Britain

an income tax in the amount of £5550-6-0 Sterling, which, at the rate of \$4.61, was the equivalent of \$25,586.68 in United States currency. The income of plaintiff from sources within the United States during the fiscal year ended May 31, 1925, was 86.93 per centum of the total net income of plaintiff from all sources during said year. The amount of the British income tax allocable to United States income was \$22,242.69. Plaintiff deducted from dividends paid by it to its stockholders during said fiscal year, an amount of at least \$22,242.69 on account of said British income taxes.

#### IX.

That the Commissioner of Internal Revenue has allowed no deduction on account of said British income taxes for the fiscal year ended May 31, 1925.

#### CONCLUSIONS OF LAW

As a conclusion of law from the foregoing facts, the Court determines that the Commissioner of Internal Revenue erred in failing and refusing to allow to plaintiff deductions on its income tax return for the fiscal year ended May 21, 1925, in the amount of \$785.46 for additional profits taxes accrued and paid to the Government of Great Britain, and in the amount of \$22,242.69 for income taxes accrued and paid to the Government of Great Britain, and in levying tax assessments on the basis of net income computed without the allowance of said deductions.

The Court determines that the defendant Galen H. Welch, erroneously and illegally collected from plaintiff the sum of \$2926.79, and that plaintiff is entitled to

recover from defendant the sum of \$2926.79, together with interest at the rate of six per cent on \$2415.14 from February 4, 1926, and on \$511.65 from November 14, 1925, as provided by law.

That plaintiff is also entitled to costs of suit herein.

That judgment be entered against the defendant accordingly.

DATED: Nov. 8, 1933.

Geo. Cosgrave  
United States District Judge.

Approved as to form according to Rule 44

EUGENE HARPOLE

Special Attorney,

Bureau of Internal Revenue

[Endorsed]: Filed Nov. 8, 1933 R. S. Zimmerman,  
Clerk By Francis E. Cross, Deputy Clerk.

Whereupon the Court accepted the proposed Findings of Fact and Conclusions of Law submitted by the Plaintiff, and adopted, made and entered the same as its Findings of Fact and Conclusions of Law herein and rejected the Findings of Fact and Conclusions of Law requested by the defendant to which the defendant noted an exception and on the 24th day of November, 1933, the following Order was duly made and entered by the Court:

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE KERN RIVER OILFIELDS )		
OF CALIFORNIA, LTD., a )		
Corporation, )		No. 4254-C.
	Plaintiff, )	ORDER
vs. )		ALLOWING
GALEN H. WELCH, Collector of )		EXCEPTIONS
Internal Revenue, )		
	Defendant. )	

IT IS ORDERED that exception in favor of the defendant, to the Court's action in adopting and entering the Conclusions of Law and Judgment presented by the plaintiff and in refusing to adopt the Findings of Fact and Conclusions of Law presented by the defendant, be entered on the minutes of the court as of the 8th day of November, 1933, by the Clerk, nunc pro tunc.

Geo Cosgrave,  
UNITED STATES DISTRICT JUDGE

Approved as to form under  
Rule 44 and no objection  
offered to entry of the Order.

Joseph D. Peeler  
Attorney for Plaintiff.

[Endorsed]: Filed Nov. 24, 1933. R. S. Zimmerman,  
Clerk By L. Wayne Thomas, Deputy Clerk.

STIPULATION RE APPROVAL OF BILL  
OF EXCEPTIONS

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for Plaintiff, Appellee, and Defendant, Appellant, that the foregoing Bill of Exceptions contains all evidence given and proceedings had in the trial of this action material to the Appeal of defendant, and that it may be approved, allowed and settled by the Judge in the above-entitled Court as correct in all respects; that the same shall be made a part of the record in said case and be the Bill of Exceptions therein and that said Bill of Exceptions may be used by either plaintiff or defendant upon any Appeal taken by plaintiff or defendant, and that said Bill may be certified and signed by the Judge upon presentation of this Stipulation without further notice to either party hereto or to their respective counsel.

Dated: This 26th day of April, 1934.

MILLER, CHEVALIER, PEELER  
& WILSON,

By Joseph D. Peeler

Attorneys for Plaintiff and Appellee.

Peirson M. Hall

PEIRSON M. HALL, D

United States Attorney,

Robert W. Daniels

ROBERT W. DANIELS,

Asst. U. S. Attorney,

Alva C. Baird E. H.

ALVA C. BAIRD,

Assistant U. S. Attorney,

Eugene Harpole

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue,

Attorneys for Defendant and Appellant.

ORDER APPROVING AND SETTLING  
BILL OF EXCEPTIONS

The *following* Bill of Exceptions duly proposed and agreed upon by counsel for the respective parties, is correct in all respects and is hereby approved, allowed and settled and made a part of the record herein and said Bill of Exceptions may be used by the parties plaintiff or defendant upon any appeal taken by either party plaintiff or defendant.

Dated: This 27th day of April, 1934.

Geo. Cosgrave

UNITED STATES DISTRICT JUDGE.

[Endorsed]: Filed Apr 27 1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER EXTENDING TIME WITHIN WHICH TO  
SERVE AND FILE BILL OF EXCEPTIONS

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, Alva C. Baird, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including the 8th day of February, 1934.

Dated: November 15, 1933.

Geo Cosgrave,  
UNITED STATES DISTRICT JUDGE

[Endorsed]: Filed Nov. 15, 1933. R. S. Zimmerman,  
Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER EXTENDING TERM  
and Time.

Upon motion of the Defendant, and good cause appearing therefor,

IT IS ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Time and the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including May 8, 1934. and the time therefore is extended accordingly.

DATED: February 7, 1934.

Geo. Cosgrave  
United States District Judge

[Endorsed]: Filed Feb 7-1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas Deputy Clerk



[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL FROM JUDGMENT  
ENTERED NOVEMBER 8, 1933.

TO THE ABOVE ENTITLED COURT AND TO  
HONORABLE GEORGE COSGRAVE, JUDGE  
THEREOF

Your petitioner, the defendant in the above-entitled case, feeling aggrieved by the judgment as entered herein in favor of said plaintiff on November 8, 1933, prays that this Appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such Court in such cases made and provided, and in connection with this petition petitioner hereby presents Assignment of Errors dated February 8th, 1934.

Peirson M. Hall

PEIRSON M. HALL, E. H.

United States Attorney.

Alva C. Baird

ALVA C. BAIRD, E. H.

Assistant United States Attorney,

Eugene Harpole

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue,

Attorneys for Defendant.

[Endorsed]: Filed Feb 8-1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

THE KERN RIVER OILFIELDS )		
OF CALIFORNIA, LTD., a Corpo- )		
ration, )		
	Plaintiff, )	
vs. )		NO. 4254-C.
	) )	
GALEN H. WELCH, Collector of )		ASSIGNMENT
Internal Revenue for the Sixth Col- )		OF ERRORS.
lection District of California, )		
	) )	
	Defendant. )	
	) )	

The Defendant and appellant above-named makes and files the following Assignment of Errors upon which he will rely in the prosecution of his appeal from the judgment of this Court entered therein on the 8th day of November, 1933.

I.

The Court erred in rendering judgment against the Defendant and in favor of the plaintiff in the amount of

\$2,926.79, together with interest at the rate of six per cent (6%) on \$1,956.72 from September 10, 1926, and on \$970.07 from May 12, 1926, with costs taxed at \$20.00, in that the evidence introduced herein and the facts found therefrom by the Court and the record in this cause are insufficient to support a judgment in favor of the plaintiff in said amount, or in any other sum or at all, for the reason that said evidence and the facts established and found by the Court and the record disclose that plaintiff is a corporation organized under the laws of Great Britain which, during the fiscal year ended May 31, 1925 accrued and paid to the Government of Great Britain an income tax equivalent to \$25,586.88 in United States currency; and that the plaintiff deducted from the dividends paid by it to its stockholders during said fiscal year an amount of at least \$22,242.68 on account of said British income taxes.

## II.

The Court erred in rendering judgment against the defendant and in favor of the plaintiff herein for the reason that said judgment is not supported by the facts found by the Court herein for the reason that the Court found as a fact that during the fiscal year ended May 31, 1925, plaintiff accrued and paid to the Government of Great Britain an income tax in the amount of £5550-6-0 Sterling, which, at the rate of \$4.61, was the equivalent of \$25,586.68 in United States currency. The income of plaintiff from sources within the United States during the

fiscal year ended May 31, 1925, was 86.93 per centum of the total net income of plaintiff from all sources during said year. The amount of the British income tax allocable to United States income was \$22,242.69. Plaintiff deducted from dividends paid by it to its stockholders during said fiscal year, an amount of at least \$22,242.69 on account of said British income taxes.

### III.

The Court erred in refusing to adopt the Defendant's Proposed Finding of Fact Number I, which reads as follows:

#### "I.

"That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action,"

for the reason that the record and the evidence in this case support and require said Proposed Finding of Fact.

### IV.

The Court erred in refusing to adopt the Defendant's Proposed Conclusions of Law numbered I and II, which read as follows:

#### "I.

"That there was no substantial or sufficient evidence produced on behalf of the plaintiff upon which to support a Judgment in its favor in the above-entitled action."

## "II.

"That upon the law, the plaintiff is not entitled to recover any sum whatsoever from the defendant in the above-entitled cause",

for the reason that the evidence introduced and the facts found by the Court in this action require the adoption of said Conclusions of Law.

## V.

The Court erred in concluding, as a matter of law, that the Commissioner of Internal Revenue erred in failing and refusing to allow the plaintiff a deduction on its income tax return for the fiscal year ended May 31, 1925 in the amount of \$785.46 for additional profits taxes accrued and paid to the Government of Great Britain, and the amount of \$22,242.69 for income taxes accrued and paid to the Government of Great Britain, and in levying tax assessments upon the basis of net income computed without the allowance of said deductions for the reason that the evidence introduced and the facts found therefrom by the Court disclose that the amount of \$22,242.69 so accrued and paid to the Government of Great Britain for income taxes by plaintiff was by it deducted from dividends paid by it to its stockholders during said fiscal year ending May 31, 1925.

## VI.

The Court erred in failing to find and conclude as a matter of law herein that no part of the amount of

\$22,242.69, accrued and paid by the plaintiff to the Government of Great Britain as an income tax during the fiscal year ended May 31, 1925, and deducted by plaintiff from dividends paid by it to its stockholders during said fiscal year, was deductible from plaintiff's gross income for said year in computing the correct income tax due from it to the Government of the United States.

## VII.

The Court erred as a matter of law in not rendering judgment against the plaintiff and in favor of the defendant for his costs and disbursements expended herein.

Dated: February 8th, 1934.

Peirson M. Hall

PEIRSON M. HALL, E. H.

United States Attorney.

Alva C. Baird

ALVA C. BAIRD, E. H.

Assistant U. S. Attorney.

Eugene Harpole,

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue,  
Attorneys for Defendant.

[Endorsed]: Filed Feb 8-1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL.

In the above-entitled action, the defendant having filed its petition for an order allowing it to appeal from the judgment entered in the above-entitled action on November 8, 1933;

It Is Ordered, That said appeal, from said judgment, to the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby allowed to the defendant, and that a certified transcript of the record, bill of exceptions, exhibits, stipulations and pleadings and all proceedings herein be transmitted to said United States Circuit Court of Appeals.

Dated this 8th day of February, 1934.

Geo. Cosgrave

UNITED STATES DISTRICT JUDGE.

[Endorsed]: Filed Feb 8-1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas Deputy Clerk

[TITLE OF COURT AND CAUSE.]

SECOND AMENDED PRAECIPE

TO: R. S. Zimmerman, Clerk of the United States District Court, Southern District of California:

YOU ARE HEREBY REQUESTED to make a Transcript of Record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal allowed in the above-entitled cause, and to include in said Transcript of Record, the following papers:

1. Citation on Appeal.
2. Complaint.
3. Answer.
4. Stipulation Waiving Jury.
5. Stipulation and Order Consolidating Cases for Trial.
6. Findings of Fact and Conclusions of Law.
7. Judgment.
8. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term, dated November 15, 1933.
9. Order Extending Term and Time to File Bill of Exceptions, dated February 7, 1934.
10. Petition for Appeal.
11. Assignments of Error on Appeal.
12. Order Allowing Appeal.



## 13. Bill of Exceptions.

(a) Stipulation Waiving Jury.

(b) Stipulation of Facts with Exhibits omitted.

(c) Stipulation of Counsel in open Court and citations of British Law and Cases.

(d) Minute Order dated September 21, 1933.

(e) Defendant's Request for Findings of Fact and Conclusions of Law.

(f) Plaintiff's Proposed Findings of Fact and Conclusions of Law.

(g) Order Allowing Exceptions Nunc Pro Tunc.

## 14. Clerk's Certificate and this Second Amended Praecipe.

Dated: This 26th day of April, 1934.

Peirson M. Hall D.

PEIRSON M. HALL,

United States Attorney.

Robert W. Daniels

ROBERT W. DANIELS

Assistant United States Attorney,

Alva C. Baird E. H.

ALVA C. BAIRD,

Assistant United States Attorney.

Eugene Harpole

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue,

Attorneys for Defendant and Appellant.

## STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Appellant and Appellee that the foregoing Second Amended Praecipe may be filed, shall be used in lieu of and replace all Praecipis heretofore filed for the purpose of the preparation of the record upon Appeal in the above-entitled action; that in preparing the record herein, the Clerk of the United States District Court may omit all endorsements, except the endorsements of the filing date, from the papers requested in the foregoing Second Amended Praecipe.

MILLER, CHEVALIER, PEELER & WILSON,

BY Joseph D. Peeler,

Attorneys for Plaintiff and Appellee.

Peirson M. Hall D.

PEIRSON M. HALL,

United States Attorney.

Robert W. Daniels

ROBERT W. DANIELS,

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Alva C. Baird E. H.

ALVA C. BAIRD,

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Eugene Harpole,

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue,

Attorneys for Defendant and Appellant.

[Endorsed]: Filed Apr 27 1934 R. S. Zimmerman,  
Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 60 pages, numbered from 1 to 60 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; complaint; answer; stipulation waiving jury; stipulation and order consolidating cases for trial; special findings of fact and conclusions of law; judgment; bill of exceptions; order extending time within which to serve and file bill of exceptions; order extending term and time to file bill of exceptions; petition for appeal assignment of errors; order allowing appeal, and second amended praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$                    and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of May, in the year of Our Lord One Thousand Nine Hundred and Thirty-four and of our Independence the One Hundred and Fifty-eighth.

R. S. ZIMMERMAN,  
Clerk of the District Court of the  
United States of America, in  
and for the Southern District  
of California.

By

Deputy.